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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,225	05/04/2001	Kenichiro Shiroyama	Q64175	6389

7590 12/20/2006  
SUGHRUE, MION, ZINN,  
MACPEAK & SEAS, PLLC.  
2100 Pennsylvania Avenue N.W.  
Washington, DC 20037

EXAMINER
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CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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12/20/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/848,225

Applicant(s)

SHIROYAMA ET AL.

Examiner

Lakshmi S. Channavajjala

Art Unit

1615

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 7 and 12-19.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

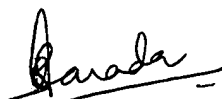
**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: See Continuation Sheet.

Continuation of 13. Other: Applicants' arguments filed 12-4-06 have been considered but not found persuasive. Applicants' argue that the finality of the last office action should be withdrawn because the combination of WO equivalent of Kaneko and Nakamura, used for rejecting claims, was the exact same references used by the examiner in the action of 11-19-2003. However, the finality of the last action is deemed to be proper, for the same reasons explained to the counsel during the telephonic interview 12-15-06 (summary attached to this action). Applicants argue that the formula I of Jokura requires a double bond adjacent to R2 position that is not required in the instant claims. However, instant claims require R1 (equivalent position of R2 of Jokura) be a hydrocarbon, which can include double bond containing hydrocarbon. Instant claims do not exclude the double bond containing hydrocarbons of Jokura. It is argued that while the reference teaches ceramides and pseudoceramides in excellent skin moisturization and low skin irritation, it is the combination of components (A), (B) and (C) which exhibits such effects and do not arise from the sole use of component (A) which is a ceramide of formula (1) or a pseudoceramide of formula (2). Instant claims do not exclude the combination of components taught by Jokura. It is argued that if Nakamura were to be combined with Jokura, the ceramide would be the ceramide of formula (1) of Jokura. However, as explained above, the ceramide of formula (1) of Jokura and the natural ceramide of claim 15 of the present application are not different compounds. Accordingly, the argument is not persuasive. With respect to Nakamura and Kaneko, it is argued that the ionic surfactant is not beneficial to the instant composition and instead may cause irritation. However, applicants agree that the instant language allows for the presence of the above surfactants. It is further argued that instant composition is in a clear state by a combination of four components and that the ionic surfactants and polyhydric alcohols of Nakamura are not essential. However, applicants agree that the products of Nakamura also include transparent products, which are the same as instant clear products. Therefore, the rejections have been maintained.



LAKSHMI S. CHANNAVAJALA  
PRIMARY EXAMINER